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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 PEOPLE OF THE STATE OF ) No. C02-4621 BZ  
12 CALIFORNIA, et al., ) and related case  
13 Plaintiff(s), ) NO. C02-4623 BZ

14 v. ) **ORDER GRANTING PLAINTIFFS'**  
15 UNITED STATES DEPARTMENT ) **MOTIONS FOR SUMMARY**  
16 OF TRANSPORTATION, et al., ) **JUDGMENT AND DENYING**  
17 Defendant(s). ) **DEFENDANTS' MOTION FOR**  
18 ) **SUMMARY JUDGMENT**

19 \_\_\_\_\_ )  
20 \_\_\_\_\_ )  
21 SIERRA CLUB, et al., )  
22 Plaintiff(s), )  
23 v. )  
24 UNITED STATES DEPARTMENT )  
25 OF TRANSPORTATION, et al., )  
26 Defendant(s). )  
27 \_\_\_\_\_ )  
28 \_\_\_\_\_ )

29 The Town of Mammoth Lakes ("Town") is located on the  
30 eastern side of Sierra Nevada in southern Mono County, an  
31 area with unique natural attractions but inconvenient  
32 access. The Mammoth Yosemite Airport, which is small and

1 presently has no scheduled commercial service, is  
2 approximately seven miles east of the Town on U.S. 395. In  
3 the late 1990's, there were plans afoot to upgrade the  
4 area's ski facilities and to construct thousands of new  
5 housing units. At the same time, the Town was concerned  
6 that it was losing skiing visitors to resorts with  
7 regularly scheduled commercial air service. The Town  
8 therefore proposed an expansion of the airport to  
9 accommodate commercial jet traffic, and hopefully increase  
10 substantially the number of visitors to the region. On May  
11 30, 2000, the Mammoth Mountain Ski Area, whose majority  
12 owner is Intrawest Corporation, entered an air service  
13 agreement with American Airlines initially for commercial  
14 flights from American's hubs in Chicago and Dallas.

15 In October 2000, the Town published a draft  
16 environmental assessment for this expansion project. In  
17 particular, the Town proposed strengthening and extending  
18 the airport's runway, creating an air carrier apron, adding  
19 access roads and parking facilities and constructing a  
20 passenger terminal complex. The project contemplated an  
21 eventual expansion of air services with other carriers and  
22 from additional cities. The long-term result would be  
23 hundreds of thousands of air passengers every year at the  
24 Mammoth Yosemite Airport. The draft environmental  
25 assessment concluded that there would be "no significant  
26 environmental impact caused by the expansion of the airport  
27 that could not be satisfactorily mitigated."

28 Administrative Record ("AR") 88 at 1. A number of state

1 and federal agencies, along with environmental  
2 organizations and individuals, submitted comments  
3 contesting that conclusion.

4 In December of 2000, the Town submitted a final  
5 environmental assessment ("FEA") which was little changed  
6 from the draft. The Federal Aviation Administration then  
7 adopted the FEA and signed a Finding of No Significant  
8 Impact ("FONSI") for the project. Some of the concerned  
9 agencies, including plaintiff the State of California,  
10 continued to express their concerns about the project. In  
11 March 2001, the Town addressed a few of those concerns,<sup>1</sup> in  
12 a document, which though titled, "Errata," supplements,  
13 rather than corrects, the FEA. Also in March 2001, Jones &  
14 Stokes, a firm retained by the consulting airport engineer,  
15 prepared a Biological Assessment to assist Mammoth Yosemite  
16 Airport with biological resource issues related to the  
17 airport expansion project. AR 241 Ex. A. Based on  
18 information in the Biological Assessment, the United States  
19 Fish and Wildlife Service ("FWS") prepared a Biological  
20 Opinion in July 2001. On July 29, 2002, the Federal  
21 Aviation Administration ("FAA") issued a Record of Decision  
22 ("ROD") unconditionally approving the airport project and  
23 the FONSI.

24 Thereafter, the People of the State of California and  
25 the Sierra Club and other conservationist organizations  
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28 <sup>1</sup> The principal concerns addressed are the likelihood  
of birds being struck by aircraft and the impact of the  
project on the sage grouse.

1 (collectively "plaintiffs") filed separate actions against  
2 federal defendants the United States Department of  
3 Transportation, Secretary of Transportation Norman Mineta,  
4 the Federal Aviation Administration and Federal Aviation  
5 Administrator Marion Blakey (collectively "defendants"),  
6 alleging that defendants had violated the National  
7 Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370d,  
8 by approving the FEA and issuing the FONSI for the airport  
9 expansion project at the Mammoth Yosemite Airport.<sup>2</sup>  
10 Plaintiffs seek orders enjoining the expansion project and  
11 requiring defendants to prepare an Environmental Impact  
12 Statement ("EIS") in compliance with NEPA.

13 Pursuant to stipulation, the parties filed cross-  
14 motions for summary judgment and I held a hearing on April  
15 16, 2003. For the reasons stated below, I find that under  
16 the circumstances of this case, defendants' decision not to  
17 prepare an EIS was unreasonable.<sup>3</sup>

18 NEPA requires federal agencies to prepare an EIS prior  
19 to taking "major Federal actions significantly affecting  
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22 <sup>2</sup> On November 26, 2002, the separate actions by the  
23 State and the Sierra Club were related. On February 3,  
24 2003, I permitted the Town to intervene as a defendant only  
in the remedy phase of this case. On March 31, 2003, I  
granted the Town's motion for leave to file an amicus curiae  
brief on the merits addressing the merits of this case.

25 <sup>3</sup> Defendants argue that because plaintiffs have sought  
26 review of an order under Part A within the meaning of 49  
27 U.S.C. § 46110(a), the Court of Appeals has exclusive  
jurisdiction in this case. As I am bound by Ninth Circuit  
28 precedent finding that review in this Court is appropriate  
under these circumstances, I express no opinion on this  
jurisdictional issue. City of Alameda v. Federal Aviation  
Administration, 285 F.3d 1143 (9th Cir. 2002).

1 the quality" of the environment." Kern v. United States  
2 Bureau of Land Management, 284 F.3d 1062, 1067 (9th Cir.  
3 2002) (quoting 42 U.S.C. § 4332(2)(C)). An agency may  
4 prepare an EA, which briefly describes the need for,  
5 alternatives to, and environmental impacts of the proposed  
6 federal action, to decide whether the impacts of the  
7 proposed action are significant enough to warrant an EIS.  
8 Blue Mountains Diversity Project v. Blackwood, 161 F.3d  
9 1208, 1212 (9th Cir. 1998) (citing 40 C.F.R. § 1508.9). If  
10 an agency determines in the EA that the federal action will  
11 not significantly affect the environment, the agency must  
12 issue a FONSI and its NEPA review ends. See Blue  
13 Mountains, 161 F.3d at 1212; 40 C.F.R. § 1508.13.

14 In reviewing an agency's decision not to prepare an  
15 EIS, the inquiry is whether the "responsible agency has  
16 "reasonably concluded" that the project will have no  
17 significant adverse environmental consequences.'" Save the  
18 Yaak Committee v. J.R. Block, 840 F.2d 714, 717 (9th Cir.  
19 1988) (quoting San Francisco v. United States, 615 F.2d  
20 498, 500 (9th Cir. 1980)). "If substantial questions are  
21 raised regarding whether the proposed action may have a  
22 significant effect upon the human environment, a decision  
23 not to prepare an EIS is unreasonable." Id. (emphasis in  
24 original). An agency's decision not to prepare an EIS is  
25 unreasonable if the agency fails to "supply a convincing  
26 statement of reasons why potential impacts are  
27 insignificant'" because "[t]he statement of reasons is  
28 crucial' in determining whether the agency took a 'hard

1 look' at the potential environmental impact of a project"  
2 as required by NEPA. Id. (quoting Steamboaters v. FERC,  
3 759 F.2d 1382, 1393 (9th Cir. 1985)).

4 Whether a project may cause a significant effect on  
5 the environment requires consideration of context and  
6 intensity. National Parks & Conservation Ass'n v. Babbitt,  
7 241 F.3d 722, 731 (9th Cir. 2001); 40 C.F.R. § 1508.27.  
8 Context simply "delimits the scope of the agency's action,  
9 including the interests affected." National Parks, 241  
10 F.3d at 731; see also 40 C.F.R. § 1508.27(a). Intensity  
11 relates to the "degree to which the agency action affects  
12 the locale and interests identified in the context part of  
13 the inquiry," and includes consideration of factors such as  
14 the controversial nature of the project, the cumulative  
15 impacts of the project and the degree to which the project  
16 may impact endangered or threatened species. Id.; see also  
17 40 C.F.R. § 1508.27(b).

### 18 **Controversy**

19 A review of the FEA begins with the nature of the  
20 opposition. It comes not just from concerned citizens or  
21 environmental organizations such as plaintiffs Sierra Club,  
22 National Parks Conservation Association, California Trout,  
23 Inc. and Natural Resources Defense Council; it comes from  
24 many of the state and federal agencies charged with  
25 environmental or conservation responsibilities in the  
26 region. In fact, the plaintiff in the lead suit is the  
27 State of California. Little would be gained by chronicling  
28 the FEA's failure to adequately address each of the issues

1 raised by the various state and federal agencies.<sup>4</sup> One  
2 example will suffice. In response to the draft  
3 environmental assessment, on November 14, 2000, the  
4 California Department of Fish and Game ("DFG") submitted a  
5 lengthy and detailed letter concluding that "the  
6 information contained in the FEA is inadequate to support a  
7 finding of no significant impact." AR 127 Appx J at S-D.  
8 On December 15, 2000, a DFG representative called the FAA  
9 to request more information and time to prepare a final  
10 response to the FEA. AR 118. FWS was also reviewing the  
11 FEA at that time and had decided to request that the FAA  
12 prepare an EIS. AR 119. Notwithstanding defendants'  
13 knowledge about the concerns these agencies were raising,  
14 on that same day, the FONSI was recommended for approval.  
15 AR 125.

16 The FONSI states that the FEA was "coordinated with"  
17 these concerned governmental agencies. The record,  
18 however, demonstrates that the FEA ignored or did not  
19 adequately treat their concerns.<sup>5</sup> In doing so, the FEA  
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21 <sup>4</sup> The record in this case contains comments from  
22 various state and federal agencies that question the  
23 conclusion that the airport project would have no  
24 significant environmental impact. See generally, AR 127 at  
25 Appx. J at F-B (Bureau of Land Management); F-C (National  
26 Park Service); S-B (California Department of  
27 Transportation); S-C (California Regional Water Quality  
28 Control Board); S-D (California Department of Fish and  
Game); L-A (Long Valley Fire Protection District).

<sup>5</sup> After the Errata, the Biological Assessment and the  
Biological Opinion, some agencies assented to the project.  
See AR 241 Ex. B, Appx C at 2. This does not alter the fact  
that substantial questions were raised at the time the FEA  
and FONSI were prepared that should have triggered

1 failed to evaluate "the degree to which the effects on the  
2 quality of the human environment are likely to be  
3 controversial." 40 C.F.R. § 1508.27(b)(4). In this  
4 context, the term "controversial" refers to "cases where a  
5 substantial dispute exists as to the size, nature, or  
6 effect of the major Federal action rather than to the  
7 existence of opposition to a use." Sierra Club v. United  
8 States Forest Serv., 843 F.2d 1190, 1193 (9th Cir. 1988)  
9 (finding that where Sierra Club presented evidence from  
10 numerous experts showing the EA's inadequacies and casting  
11 doubt on the agency's conclusions, "[t]his is precisely the  
12 type of 'controversial' action for which an EIS must be  
13 prepared."). Concerns about a project's substantial  
14 impacts raised by agencies with special expertise weigh in  
15 favor of requiring an EIS. See Foundation for No. Am. Wild  
16 Sheep v. United States Department of Agriculture, 681 F.2d  
17 1172, 1178-79 (9th Cir. 1982). Opposition to a project  
18 does not necessarily create a controversy requiring an EIS,  
19 (see Surfrider Foundation v. Dalton, 989 F. Supp. 1309,  
20 1323 (S.D. Cal. 1998), but the volume of comments from and  
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22 preparation of an EIS. See 40 C.F.R. § 1508.9(a)(1); Blue  
23 Mountains, 161 F.3d at 1214. In addition to reviewing the  
24 FEA, I have reviewed all subsequent environmental analyses,  
25 including the Errata, the Biological Assessment and the  
26 Biological Opinion. Even if it is proper to consider all  
27 subsequent documents as part of the FEA, the environmental  
28 analysis is still lacking because aspects of the  
environmental impacts due to an increase in visitors, such  
as those described in this opinion, were not appropriately  
evaluated in any document. Moreover, as far as I can tell,  
analyses subsequent to the FEA were not subject to public  
comment.



1 the serious concerns raised by federal and state agencies  
2 specifically charged with protecting the environment  
3 support a finding that an EIS was required in this case.  
4 Given the controversy surrounding the airport project,  
5 defendants unreasonably failed to prepare an EIS.

#### 6 **Growth/Cumulative Impacts**

7 Plaintiffs next contend that the FEA fails to  
8 adequately analyze the growth-inducing effects of the  
9 airport project. Plaintiffs also contend that the FEA  
10 fails to adequately analyze the cumulative impacts of the  
11 airport project. A cumulative impact on the environment  
12 "results from the incremental impact of the action when  
13 added to other past, present, and reasonably foreseeable  
14 future actions...."<sup>6</sup> 40 C.F.R. § 1508.7; Blue Mountains,  
15 161 F.3d at 1214. Because in this case these contentions  
16 are frequently related, I will largely consider them  
17 together.

18 Defendants claim that the purpose of the airport  
19 project to extend the runway is to "provide the necessary  
20 runway length to safely allow air carrier/charter aircraft  
21 up to the size of a Boeing 757-200 to operate at the  
22 Airport." AR 127 at I-1. Seen that way, there are "no  
23 significant environmental impacts caused by the expansion  
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26 <sup>6</sup> Cumulative impacts may result from "individually  
27 minor but collectively significant actions taking place over  
28 a period of time." 40 C.F.R. § 1508.7. In determining  
whether a project will have a significant impact, an agency  
must consider "whether the action is related to other  
actions with individually insignificant but cumulatively  
significant impacts." 40 C.F.R. § 1508.27(b)(7).

1 of the Airport that could not be satisfactorily mitigated."  
2 AR 127 at I; AR 125.

3 Defendants reached this conclusion by not taking any  
4 look, and certainly not a hard look, at many environmental  
5 consequences of the airport project. At bottom, many  
6 deficiencies in the FEA can be attributed to defendants'  
7 myopic view of the airport project. If the only purpose of  
8 airport expansion was to improve the safety and convenience  
9 of existing air service, the FEA might be sufficient to  
10 comply with NEPA.<sup>7</sup> Section 2.3 of the FEA states, however,  
11 that the need for an improved airport is to stimulate  
12 regional growth by improving access to the region's "year-  
13 round recreational attractions consisting of skiing in the  
14 winter and numerous outdoor recreational activities in the  
15 spring, summer and autumn, which include major attractions  
16 such as Yosemite National Park, Mono Lake, June Lake and  
17 Devil's Postpile National Monument." AR 127 at II-2. The  
18 FEA goes on to note that the Mammoth Lakes region has lost  
19 ski visitors to other resorts which have direct commercial  
20 air service and that one way of attracting "new visitors to  
21 the region would be by reducing visitor travel times to the  
22 Mammoth Lakes area. The development of airport facilities  
23 to accommodate commercial airline and charter operations  
24 would allow direct access to the region, thereby reducing  
25 visitor travel time." AR 127 at II-2. Yet the FEA focuses  
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28 <sup>7</sup> Even then, defendant's treatment of some of the  
wildlife issues such as the bighorn sheep might be  
challengeable.

1 almost exclusively on the impact that the airport expansion  
2 project itself and those few projects directly tied to it  
3 will cause. Almost entirely ignored in the FEA is a  
4 consideration of the impact on the region from the  
5 thousands or hundreds of thousands of additional visitors  
6 that the airport expansion is expected to attract. Also  
7 missing from the FEA is a consideration of the cumulative  
8 impacts on the region of other projects near the airport  
9 and other reasonably foreseeable projects. A few examples  
10 follow:

11       **1. Other Projects.** Although the FEA shows eight  
12 projects in the region near the airport, (see AR 127 at  
13 Exhibit V-22), defendants unreasonably limit the cumulative  
14 impacts discussion to two projects that are in the vicinity  
15 of the airport, one within the airport boundary and one  
16 near the airport along U.S. 395. Not only is the  
17 discussion of cumulative environmental impacts of these  
18 projects inadequate, (see, e.g., AR 127 at V-87 (discussion  
19 of biotic communities limited to the mule deer, when other  
20 wildlife are present), defendants' failure to meaningfully  
21 analyze any of the other currently proposed projects near  
22 the airport is unreasonable. Moreover, additional hotel  
23 and other construction will be necessary to accommodate the  
24 increase in visitors, yet the FEA does not address the  
25 cumulative impacts of these foreseeable future projects.

26       **2. Residential and Lodging Growth.** The FEA estimates  
27 that the number of skier days will double in the next  
28 twenty years. With little basis in the record, the FEA

1 concludes that existing under-utilized residential  
2 properties will be able to sustain this increase. The FEA  
3 does recognize that the number of hotel and motel units  
4 will double. AR 127 at V-25. A substantial increase in  
5 visitors and a doubling in hotel and motel capacity should  
6 of necessity result in an increase in the region's  
7 permanent and temporary population to service these  
8 visitors. No where does the FEA consider the impact that  
9 this doubling in hotel and motels, and this resulting  
10 increase in population, will have on the region's air and  
11 water quality, sewage treatment facilities, traffic and the  
12 like.

13 In oral argument, the FAA focused on the fact that the  
14 Town has projected growth in the region to expand  
15 significantly in the next twenty years with or without the  
16 airport expansion. While this may be true, there is no  
17 discussion in the FEA about the fact that introducing  
18 commercial air service will accelerate that growth. As the  
19 Town acknowledged in the Draft EA:

20 the introduction of air carrier jet service to  
21 Mammoth Yosemite Airport is likely to result in  
22 faster tourism growth to the region than would  
23 otherwise occur .... The convenience of jet  
24 service to Mammoth Yosemite Airport would  
25 undoubtedly cause the growth to occur faster than  
26 if the air service were not provided.

27 AR 88 at V-77. This section was not included in the FEA  
28 and accelerated growth is not analyzed in the FEA. This  
29 indicates that the FEA did not take a hard look at the  
30 environmental impacts of rapid growth.

31 **3. Air Quality.** Defendants' conclusions about the

1 airport project's impact on air quality are not supported  
2 by evidence in the record and are therefore unreasonable  
3 and show that defendants failed to take a hard look at the  
4 air quality issues raised by the airport project. For  
5 example, the FEA states that the "introduction of air  
6 service will directly reduce adverse air quality emissions  
7 as a result of reduced vehicular traffic in the region."  
8 AR 127 at II-2. This statement seems at most disingenuous  
9 or at least wishful thinking. With respect to existing  
10 visitors, the FEA states that California residents account  
11 for 87% of Mammoth Lakes' current business and that 70% of  
12 California users are from the Los Angeles area. AR 127 at  
13 IV-12. The FEA concedes that the "vast majority" of the  
14 Los Angeles visitors will continue to drive to Mammoth  
15 Lakes. AR 127 at IV-14. If the large majority of current  
16 visitors will continue to drive and the airport project  
17 will bring in hundreds of thousands of additional visitors,  
18 I find it implausible that vehicular emissions will  
19 decrease as a result of the airport expansion. Even if  
20 some of the new visitors fly rather than drive, many people  
21 would rent cars once they arrived.<sup>8</sup> Defendants assert that  
22 more visitors will take public transportation and even

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24 <sup>8</sup> Moreover, flights from American Airlines' hubs in  
25 Chicago and Dallas, not to mention the other hubs expected  
26 to follow, would open the region up to additional domestic  
27 and international visitors. While the FEA states that "many  
28 of the visitors traveling from these locations [throughout  
the United States and internationally] to or from the  
Mammoth Lakes area currently use Los Angeles or Reno  
airports and drive between the Mammoth Lakes area and these  
airports," (AR 127 at IV-7), there is no support for this  
statement in the record.

1 estimate the number of indirect vehicle trips to be zero  
2 under the proposed action. Not only do they fail to cite  
3 any factual basis for these conclusions, the basic premise  
4 under which defendants calculate the indirect vehicle trips  
5 is implausible. Defendants assume that "all passenger  
6 vehicles originating at the airport would travel a  
7 roundtrip distance of approximately 19 miles (i.e., to and  
8 from the Town of Mammoth Lakes)." AR 127 at V-33. With  
9 all the natural attractions in and around Mammoth Lakes, it  
10 is illogical to assume that all passenger vehicles will  
11 travel solely from the airport to a hotel and remain there  
12 for the remainder of the trip before returning to the  
13 airport.

14       **4. Traffic.** The FEA's traffic study suffers from the  
15 same tunnel vision. The FEA focuses on delays likely to be  
16 experienced at the intersection of U.S. 395 and Hot Creek  
17 Road and recommends mitigation measures. AR 127 at V-26-  
18 27. In a brief, two-paragraph discussion, the FEA  
19 recognizes the increase in traffic resulting from the  
20 increased number of visitors, but concludes that the  
21 increased traffic "would be offset on a micro scale by  
22 fewer tourists driving automobiles from farther airports of  
23 their homes .... Bus service between the Town and the  
24 Airport is anticipated to be the primary mode of ground  
25 transportation for passengers." AR 127 at V-27. There is  
26 no citation to any study or analysis to support these  
27 conclusions. Without any support in the FEA for these  
28 sweeping statements, I cannot find that defendants took a

1 hard look at the environmental impacts resulting from  
2 increased traffic.

3       **5. Water Quality.** The FEA states that "the entire  
4 basin in which Mammoth Yosemite Airport is located has been  
5 designated as an area in which septic tank and leaching  
6 fields cannot be used except with special approval of the  
7 [Regional Water Quality Control Board]." AR 127 at V-49.  
8 While the FEA concludes that there is adequate water supply  
9 for the project and that increased water usage would create  
10 no significant environmental impacts, the analysis is  
11 entirely focused on adequate water and sewage for the  
12 airport and its environs. There is no consideration about  
13 providing water or sewage for the growth and increased  
14 tourism mentioned elsewhere in the FEA.

15       **6. The Non-skiing Season.** The bulk of the FEA  
16 addresses the impact of the airport expansion on the  
17 Mammoth Lakes region during the winter. The current air  
18 service contract between the Mammoth Mountain Ski Area and  
19 American Airlines is limited to service during the ski  
20 season. However, the FEA notes that the region's appeal is  
21 year-round and air service expansion to include year-round  
22 service is contemplated. Yet, there is no or virtually no  
23 consideration given to the impact that the thousands of  
24 additional visitors will have on Yosemite National Park,  
25 Devils Postpile National Monument, Mono Lake and the many  
26 other wilderness and recreational areas in the region.

27       Little would be gained by cataloguing the many other  
28 impacts, such as energy and natural resources, noise

1 pollution, waste disposal and fire protection, which are  
2 given the same myopic treatment in the FEA. Suffice it to  
3 say that defendants' argument that the airport project is  
4 growth-accommodating rather than growth-inducing, (see Fed.  
5 Defs.' Opp'n to Pls.' Mots. for Summ. J. at 24:2), is  
6 belied by the record.

7 In keeping with the avowed purpose of the project, at  
8 the hearing, defendants described the FAA's mission, which  
9 is to "ensure the safe and efficient use of navigable  
10 airspace," (AR 241 at 6), as the lens through which the  
11 environmental impacts of the airport project was viewed.  
12 The FAA distanced itself from the Town's goal of expanding  
13 the airport to attract more visitors to the area.<sup>9</sup> While  
14 the FAA may have no real stake in increasing visitors to  
15 Mammoth Mountain, it is charged by NEPA with examining the  
16 indirect effects of airport projects. 40 C.F.R. § 1508(b)  
17 (NEPA requires consideration of indirect effects which are  
18 "caused by the action and are later in time or farther  
19 removed in distance, but are still reasonable  
20 foreseeable."). The FAA conceded at the hearing that it  
21 has a duty to address indirect environmental impacts, but  
22 quarreled with the notion that it was required to take a  
23 hard look at the indirect impacts from the increase in  
24 visitors, which the FAA contends would not be caused by the

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27 <sup>9</sup> In preparing the ROD, the FAA was mindful of its duty  
28 to determine whether "the impacts from the Expansion Project  
will significantly impact the quality of the surrounding  
human environment." AR 241 at 15.



1 FAA or the airport project. Given the context of this  
2 project, however, this position is unreasonable. While, in  
3 the Town's words, Mammoth Lakes is not a sleepy town with a  
4 dirt runway and a wind sock, it is also not a large city  
5 with substantial established commercial air service such as  
6 Seattle or Los Angeles. In cases involving airports in  
7 those cities, challenges to the FAA's review of  
8 environmental impacts were rejected, primarily due to  
9 existing circumstances in those airports. City of Los  
10 Angeles v. Federal Aviation Administration, 138 F.3d 806  
11 (9th Cir. 1998) (rejecting a challenge to the environmental  
12 impact statement (not an environmental assessment) for a  
13 terminal expansion project at the Burbank-Glendale-Pasadena  
14 Airport based on a claim that the FAA failed to take a hard  
15 look at the increase in passengers due to the new  
16 terminal); Seattle Community Council Federation v. Federal  
17 Aviation Administration, 961 F.2d 829 (9th Cir. 1992)  
18 (rejecting the challenge to the FAA's analysis of the  
19 effects of increased numbers of flights because the project  
20 to change flight patterns of some aircraft at the Seattle  
21 airport was simply to accommodate existing air traffic).

22 In a case involving a highway interchange in an  
23 agricultural area between Dixon and Davis, California,  
24 which is more analogous to the Mammoth Lakes area, the  
25 Ninth Circuit recognized that "it is obvious that  
26 constructing a large interchange on a major interstate  
27 highway in an agricultural area where no connecting road  
28 currently exists will have a substantial impact on a number

1 of environmental factors." City of Davis v. Coleman, 521  
2 F.2d 661, 674-75 (9th Cir. 1975). Given the nature of the  
3 area, the Ninth Circuit concluded that it was unreasonable  
4 for the agency to decide, without further consideration of  
5 the environmental impacts of increased population,  
6 increased traffic, increased pollution and increased demand  
7 for services, that the environmental impact of the highway  
8 interchange would be insignificant. Id. at 675. This  
9 reasoning applies with equal force in this case involving  
10 expansion of an airport to accommodate regular commercial  
11 air service, where none currently exists, in a scenic,  
12 mountain region with unique, largely undeveloped natural  
13 resources. Cases cited by the FAA for the proposition that  
14 it need not address indirect growth impacts on the  
15 environment are inapposite. See Citizens Against  
16 Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991);  
17 City of Grapevine, Texas v. Department of Transportation,  
18 17 F.3d 1502 (D.C. Cir. 1994).

19 As in City of Davis, the growth-inducing effects of  
20 the airport project appear to be its "raison d'être." It  
21 was hardly reasonable for defendants to conclude, based on  
22 the FEA, that the environmental impact of the proposed  
23 airport expansion would be insignificant. Common sense  
24 dictates that improving an airport to introduce regular  
25 commercial air service in an area known for, and reliant  
26 on, tourism, will have a substantial impact on a number of  
27 environmental factors. The FEA failed to take a hard look  
28 at them.

## Wildlife

The FEA's conclusion that the project would have no significant impact on endangered or threatened species strains credulity. See AR 127 at V-65. Among other flaws, the FEA fails to analyze impacts to the Owens tui chub and the Sierra Nevada bighorn sheep, both of which are located in the vicinity of the airport. AR 241 Ex. A at 1-1. The effects on the chub are analyzed in subsequent documents, such as the Biological Assessment and the Biological Opinion. It is unclear whether those documents are considered as part of the FEA in determining whether the FEA was adequate, in part because those documents do not appear to have been exposed to public comment. The impacts to the bighorn sheep were only cursorily analyzed by Jones & Stokes, who determined that the sheep were "unlikely" to be adversely effected. AR 241 Appx A at 5-4, 5-5. Defendants point to no detailed analysis of the sheep by the appropriate federal or state agency. The ROD does not even mention bighorn sheep, even though the likelihood of impacts on the sheep, as described by Jones & Stokes, was ambiguous.

I have concluded that I need not resolve the issues presented by defendants' piecemeal analysis of the wildlife issues. Since defendants will have to prepare an environmental impact statement, they will have the opportunity to analyze the wildlife issues in a more systematic fashion and expose this analysis to public comment.

1           The issue before the court is not whether the airport  
2 expansion project is good for the Town or the region, but  
3 whether defendants took a hard look at the environmental  
4 consequences of the airport project and the decision to  
5 forego an EIS was reasonable. Plaintiffs have shown that  
6 the airport expansion project may have serious environmental  
7 consequences to the Mammoth Lakes region. Because  
8 dependants failed to take a hard look at those consequences,  
9 defendants must prepare an environmental impact statement in  
10 compliance with NEPA.<sup>10</sup>

11           It is therefore **ORDERED** that plaintiffs' motions for  
12 summary judgment are **GRANTED** and defendants' motion is  
13 **DENIED**. It is further **ORDERED** that defendants, including  
14 the Town of Mammoth Lakes, which intervened on the remedy  
15 portion of this matter, are hereby **ENJOINED** from commencing  
16 any construction or other work on the airport expansion  
17 project pending conformance with all NEPA requirements,  
18 including completion and adoption of an Environmental Impact  
19 Statement.<sup>11</sup> The Town's request to exclude from this  
20 injunction certain construction activities is **DENIED**.<sup>12</sup> The  
21 \_\_\_\_\_

22           <sup>10</sup> In view of this result, I need not reach other  
23 issues raised by the motions, such as the whether defendants  
adequately considered alternative sites.

24           <sup>11</sup> See Blue Mountains, 161 F.3d at 1212 (EIS must be  
25 prepared if "substantial questions are raised as to whether  
a project . . . may cause significant degradation of some  
26 human environmental factor.") (quoting Idaho Sporting  
Congress v. Thomas, 137 F.3d 1146, 1149 (9th Cir. 1998));  
27 National Parks & Conservation Association v. Babbitt, 241  
F.3d 722, 731 (9th Cir. 2001)

28           <sup>12</sup> The reasons for this denial will be stated in a  
separate order.

1 court retains jurisdiction to enforce or modify this  
2 injunction.

3  
4 Dated: April 28, 2003

5 /s/ Bernard Zimmerman

6 Bernard Zimmerman  
7 United States Magistrate Judge

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